



June 17, 1999

Ms. Kimberley Mickelson  
Olson & Olson  
Three Allen Center, Suite 3485  
333 Clay Street  
Houston, Texas 77002

OR99-1677

Dear Ms. Mickelson:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 124987.

The City of Morgan's Point (the "city"), which you represent, received an open records request for the "original complaint and all documents, memos, findings and investigative reports that pertain or in any way relate to the sexual harassment complaint filed by" a named city police officer. You contend the requested information is excepted from required public disclosure pursuant to sections 552.102(a) and 552.107(1) of the Government Code.

The purpose of section 552.102(a) of the Government Code is to protect public employees' personal privacy. The scope of section 552.102(a) protection, however, is very narrow. *See* Open Records Decision No. 336 (1982). *See also* Attorney General Opinion JM-36 (1983). The test for section 552.102(a) protection is the same as that for information protected by common-law privacy under section 552.101: the information must contain highly intimate or embarrassing facts about a person's *private* affairs such that its release would be highly objectionable to a reasonable person *and* the information must be of no legitimate concern to the public. *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 550 (Tex. App. - Austin 1983, writ ref'd n.r.e.). *See also Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigatory files at issue in *Ellen* contained individual witness and victim statements, an affidavit given by the individual accused of the misconduct in response to the allegations, and the conclusions of the board of inquiry that conducted the investigation.

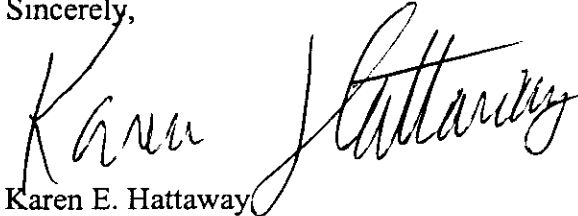
The court held that the names of witnesses and their detailed affidavits regarding allegations of sexual harassment was exactly the kind of information specifically excluded from disclosure under the privacy doctrine as described in *Industrial Foundation. Ellen, supra*, at 525. However, the court ordered the release of the affidavit of the person under investigation, in part because it ruled that he had waived any privacy interest he may have had in the information by publishing a detailed letter explaining his actions and state of mind at the time of his forced resignation. *Id.* The *Ellen* court also ordered the disclosure of the summary of the investigation with the identities of the victims and witnesses deleted from the documents, noting that the public interest in the matter was sufficiently served by disclosure of such documents and that in that particular instance “the public [did] not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements.” *Id.*

In this instance, you have not explained, nor is it apparent from the documents before us, the extent to which the city has informed the public of the details and results of the investigation that is the subject of the open records request. After reviewing the documents at issue, we conclude that the documents you have submitted to this office under Tabs D, F, G, and H, as well as some of the documents submitted under Tab I, constitute an adequate summary of the city’s investigation and therefore must be released to the public. However, in accordance with *Ellen*, the city must redact the identity of the complainant in these documents pursuant to section 552.102(a) of the Government Code. The remaining portions of these documents must be released, except as discussed below. Further, the documents you submitted under Tabs A, B, and C must be withheld in their entirety pursuant to section 552.102(a), in accordance with *Ellen*. *But see* Gov’t Code § 552.023 (granting special right of access to individual or individual’s representative to information implicating that individual’s privacy interests).

As noted above, you also contend that some of the documents you submitted to this office are excepted from required public disclosure pursuant to section 552.107(1) of the Government Code, which protects information coming within the attorney-client privilege. In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney’s legal advice and the client’s confidences made to the attorney. *See* Open Records Decision No. 574 (1990). Accordingly, these two classes of information are the only information contained in the records at issue that may be withheld pursuant to the attorney-client privilege. After reviewing the documents submitted to this office, we agree that all documents under Tabs E and J, except as indicated, and the marked portions of documents under Tab F, may properly be withheld from the public pursuant to section 552.107(1). The remaining information in these documents must be released, except to the extent that the information is otherwise protected by common-law privacy, as discussed above.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read "Karen E. Hattaway". The signature is fluid and cursive, with the first name "Karen" being more legible than the last name "Hattaway".

Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/RWP/eaf

Ref.: ID# 124987

Encl: Submitted documents

cc: Mr. Richard A. Wright  
431 Bayridge Road  
Morgan's Point, Texas 77571  
(w/o enclosures)